

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

§
FRANCISCO SANCHEZ, #01271648, §
§
Plaintiff, §
§
v. § Case No. 6:23-cv-327-JDK-KNM
§
UNKNOWN GARZA, et al., §
§
Defendants. §
§

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Francisco Sanchez, a Texas Department of Criminal Justice inmate proceeding pro se, brings this civil rights lawsuit under 42 U.S.C. § 1983. The case was transferred to this Court for proper venue and referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636.

On August 10, 2023, Judge Mitchell issued a Report and Recommendation recommending that the Court dismiss this case with prejudice as frivolous and for failure to state a claim pursuant to 28 U.S.C. § 1915A(b). Docket No. 18. Plaintiff has filed three letters since receipt of the Report. Docket Nos. 22–24. Despite the Court having informed Plaintiff that it does not routinely provide translation service (*see* Docket No. 11 at 2), the letters are in Spanish. Nevertheless, the Court construes the English attachments to those letters as Plaintiff's objections to the Report.

Where a party timely objects to the Report and Recommendation, the Court reviews the objected-to findings and conclusions of the Magistrate Judge de novo. 28

U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), superseded on other grounds by statute, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

A party objecting to a Magistrate Judge's Report must specifically identify those findings to which he objects. Frivolous, conclusory, or general objections need not be considered by the District Judge. *See Nettles v. Wainright*, 677 F.2d 404, 410 & n.8 (5th Cir. 1982) (en banc). Furthermore, objections that simply rehash or mirror the underlying claims addressed in the Report are not sufficient to entitle the party to de novo review. *See U.S. v. Morales*, 947 F.Supp.2d 166, 171 (D.P.R. 2013) ("Even though timely objections to a report and recommendation entitle the objecting party to de novo review of the findings, 'the district court should be spared the chore of traversing ground already plowed by the Magistrate.'") (internal citations omitted); *see also Vega v. Artuz*, 2002 WL 31174466, at*1 (S.D.N.Y. Sept. 30, 2002) ("[O]bjections that are merely perfunctory responses argued in an attempt to engage the district court in a rehashing of the same arguments set forth in the original petition will not suffice to invoke de novo review of the magistrate judge's recommendations.").

Judge Mitchell recommended dismissal because Plaintiff's amended complaint alleges only that Defendant Halen sends him to a food line where "problems" happen with his food and did not allege any facts at all against Defendants Garcia or Garza.

Judge Mitchell concluded that Plaintiff has not alleged that any Defendant was deliberately indifferent to a substantial risk of serious harm to Plaintiff. Docket No. 18 at 4–5. The documents submitted by Plaintiff establish that he has undergone medical evaluations indicating kidney problems, that he was seen by healthcare providers repeatedly in June 2023, and that he has alleged in prison grievances that inmates are contaminating his food with saliva, of which officials denied any knowledge. Docket Nos. 22-1, 23-1, 24-1. Plaintiff's unsupported speculation that any health problems he suffers are connected to his food are not sufficient to establish that the food poses a substantial risk of serious harm, and nothing in these documents establish that Defendants are subjectively aware of any risk of harm and have failed to act appropriately. Accordingly, the documents submitted by Plaintiff do not identify any error in the Magistrate Judge's analysis or conclusions.

Having conducted a de novo review of the record in this case and the Magistrate Judge's Report, the Court has determined that the Report of the Magistrate Judge is correct, and Plaintiff's objections are without merit. Accordingly, the Court hereby **ADOPTS** the Report of the Magistrate Judge (Docket No. 18) as the opinion of the District Court. Plaintiff's claims are **DISMISSED** with prejudice.

Signed this
Oct 4, 2023



JEREMY D. KERNODEE
UNITED STATES DISTRICT JUDGE